

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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MARASH VUCINAJ,

Plaintiff,

vs.

No. 18-CV-07606  
(LGS)

THE NEW YORK CITY POLICE  
DEPARTMENT and THE CITY OF  
NEW YORK,

Defendants.

----- X

September 3, 2019  
10:15 a.m.

30(b)(6) deposition of The New  
York City Police Department by its  
representative MATTHEW PONTILLO, held at  
the offices of White, Hilferty & Albanese,  
570 Lexington Avenue, New York, New York,  
pursuant to Court Order, before Theresa  
Tramondo, AOS, CLR, a Notary Public of the  
State of New York.

Reported by:

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STIPULATIONS

IT IS HEREBY STIPULATED AND AGREED,  
by and among counsel for the respective  
parties hereto, that the filing,  
sealing and certification of the within  
deposition shall be and the same are  
hereby waived;

IT IS FURTHER STIPULATED AND AGREED  
that all objections, except as to form  
of the question, shall be reserved to  
the time of the trial;

IT IS FURTHER STIPULATED AND AGREED  
that the within deposition may be signed  
before any Notary Public with the same  
force and effect as if signed and sworn to  
before the Court.

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2 M A T T H E W P O N T I L L O, called  
3 as a witness, having been duly sworn by a  
4 Notary Public, was examined and testified  
5 as follows:

6 BY THE REPORTER:

7 Q. State your name for the record.

8 A. Assistant Chief Matthew  
9 Pontillo, P-O-N-T-I-L-L-O.

10 Q. What is your address?

11 A. Business address, One Police  
12 Plaza, New York, New York 10038.

13 EXAMINATION BY

14 MR. ALBANESE:

15 Q. Thank you for appearing here  
16 today, sir.

17 A. Okay.

18 Q. How would you like to be  
19 addressed?

20 A. By my name Matthew Pontillo is  
21 fine.

22 Q. I wasn't sure if you would  
23 prefer Mr. Pontillo, your title?

24 A. That's fine. I don't stand on  
25 ceremony.

1 Pontillo

2 Q. Sounds good to me.

3 Please give me, just to go  
4 through your background a little bit, when  
5 did you join the NYPD?

6 A. So I joined New York City Police  
7 Department in July 1986.

8 Q. Is that when you went through --  
9 when you graduated?

10 A. I started the police academy in  
11 July of '86. I graduated in December of  
12 '86. My first assignment to the police  
13 academy was field training in Brooklyn. I  
14 was there for six months. And then June of  
15 '87, I was transferred to the 70th Precinct  
16 and I was a police officer on patrol in the  
17 70th Precinct for approximately seven years  
18 and then promoted to sergeant in 1994.

19 Q. And when you became a sergeant,  
20 did you stay at the 70th?

21 A. No. So upon being promoted to  
22 sergeant, I went to the 67th Precinct, also  
23 in Brooklyn, and I was a sergeant there  
24 through the end of 1996, and then I went to  
25 Internal Affairs, and I was there a short

1 Pontillo

2 time until May of '97, when I was promoted  
3 to lieutenant.

4 Upon being promoted to  
5 lieutenant, I went to Transit District 2 in  
6 lower Manhattan. I was there for a few  
7 months. And then in the fall of '97, I went  
8 to operations in police headquarters. And I  
9 was there until the fall -- I think  
10 September of 1999, and I was promoted to  
11 captain.

12 Upon being promoted to captain,  
13 I went to Patrol Borough Brooklyn North.  
14 And then in 2000, I think the spring of  
15 2000, I went back to operations as a captain  
16 to work on a special project. And following  
17 that I was made permanent as the CO of the  
18 Operations Unit that summer, I believe,  
19 August of 2000. I was there through 9/11.

20 And then July 1st of 2002, I was  
21 transferred to the 68th Precinct as the  
22 commanding officer, and I was there until  
23 January of 2004, when I was transferred to  
24 the Police Commissioner's Office, where I  
25 was part of an executive management team,

Pontillo

where I was working on the preparation for the upcoming Republican National Convention in New York. After the RNC and a couple of other special projects ended, I think it was in September of '04, I was promoted to full inspector and transferred to the Intelligence Division. And I was in Intel as the executive officer until 2011, when I went to the Joint Terrorism Task Force.

In 2009 I was promoted to deputy chief. 2011 I went to the Joint Terrorism Task Force. In 2013 while still in the JTTF, I was promoted to assistant chief. And then in March of 2014, I was transferred to the Police Commissioner's Office.

Commissioner Bratton had taken over the police department January 1st of 2014 and he made a whole series of internal moves and executive changes, one of which he wanted to create -- at the time we were kicking around different names and different concepts, but what is currently the Risk Management Bureau.

We talked about a professional

Pontillo

standards bureau, but primarily to respond to and deal with the Court-appointed monitor and Floyd stop-and-frisk lawsuit and also the newly created New York City Office of Inspector General for the NYPD, so we needed an entity internally to deal with them and manage those processes. Ultimately, we decided on Risk Management Bureau. That was stood up in November of '04. So I left the PC's Office to be the commanding officer of the Risk Management Bureau and then we further built that out.

And then in January of 2018, I left Risk Management to be the commanding officer of the Office of the First Deputy Commissioner, which is where I currently am. So Risk Management is one of the bureaus that reports to the first deputy commissioner. At the time the CO in that office moved onto another assignment. Commissioner Tucker, who is our first deputy commissioner, asked me if I would want to come over to his office to be the CO of his office. Of course, I accepted, and I've



1 Pontillo

2 been there ever since.

3 Q. And that is a long and  
4 distinguished list.

5 A. Yeah, it's been quite a ride.

6 Q. I mean that wholeheartedly.

7 A. Thank you.

8 Q. What are your job duties as CO  
9 of the Office of the First Deputy  
10 Commissioner?

11 A. Sure. So the Police Department,  
12 it's a pyramid, it's a hierarchical  
13 structure, paramilitary organization, so  
14 there is a chain of command. At the top  
15 obviously the police commissioner, but then  
16 in addition to the police commissioner, we  
17 have the first deputy commissioner, who is  
18 the highest ranking civilian member of the  
19 department right after the police  
20 commission.

21 Kind of on a parallel track, the  
22 first deputy commissioner is the chief of  
23 the department, who is the highest ranking  
24 uniform member of the department. He's a  
25 four-star chief. The chief of the

1 Pontillo

2 department oversees the operational bureaus,  
3 so Patrol, Transit, Housing, all the cops on  
4 the street, detectives in the squad, they  
5 all report up through their respective  
6 bureau chiefs to the chief of department.

7 Under the first deputy  
8 commissioner, we have a lot of the  
9 administrative and support units, so the  
10 Training Bureau, the Risk Management Bureau,  
11 the Personnel Bureau, Support Service  
12 Bureau, responsible for our fleet, equipment  
13 and a lot of our facilities, all report to  
14 the first deputy commissioner.

15 So part of my job is oversight  
16 of those bureaus, plus all the special  
17 projects that we have ownership or some  
18 program management over.

19 So, for example, body cameras.  
20 We started the rollout of body cameras a few  
21 years ago, and just over two years, about  
22 two and a half years, we deployed about  
23 24,000 body cameras. We went from not  
24 having any to being the largest deployment  
25 in the United States. And actually we just

1 Pontillo

2 passed the UK for worldwide deployment. So  
3 in terms of the policy, the training,  
4 managing that rollout, the follow-up, the  
5 auditing, that's all in my office. So that  
6 was a project that I was responsible for.

7 Q. And some project --

8 A. Yeah, the IT side of it was the  
9 Information Technology Bureau, but  
10 operational and programmatic side is in my  
11 office. All personnel matters, so  
12 everything personnel comes to us. We review  
13 it and we will look for -- we will have the  
14 Personnel Bureau do an analysis. Let's say  
15 if you're the CO of a unit and you want to  
16 pick up me, transfer me into your unit, we  
17 will do an analysis to see whether or not  
18 you have a vacancy because there is a budget  
19 line, of course, and there are enumerated  
20 titles, whether or not you could have that  
21 title, whether or not the command supplying  
22 that person can afford to give that person  
23 up. So there is a whole analysis that goes  
24 into it, and we will review it and make a  
25 decision and recommendation.

1 Pontillo

2 And then discipline, all  
3 discipline is under the First Dep. So the  
4 department advocate, who is our internal  
5 prosecutor, as well as the deputy  
6 commissioner of trials, who is our internal  
7 administrative law judge, who oversees  
8 formal cases that go to trial, those cases  
9 all come to us.

10 We will analyze them, we will  
11 consider the offense, the officer's history,  
12 prior precedent, we will decide on --  
13 basically, I will meet with the first deputy  
14 commissioner, we will discuss each case. We  
15 have a discipline team, and we will decide  
16 on what or he'll decide what his  
17 recommendation is going to be and then that  
18 goes to the police commissioner, and we meet  
19 monthly with the police commissioner because  
20 he is the final arbiter of discipline in the  
21 department, but there is a lot of legwork  
22 that goes into it, a lot of research, a lot  
23 of preparation.

24 We will brief the first deputy  
25 commissioner, we will go through the case,

1 Pontillo

2 he may have questions, we will need some  
3 follow-up done. Ultimately, we are  
4 preparing him to meet with the police  
5 commissioner to give a recommendation before  
6 the PC makes his final decision.

7 Q. That has been in the news a lot  
8 lately?

9 A. Yes. So that was probably a  
10 week of nothing else, but reading  
11 transcripts and looking at exhibits.

12 Q. I'm not going to go down that  
13 road and I'm certainly not going to opine on  
14 that one.

15 You mentioned transfers.

16 A. Yes.

17 Q. All transfers go through your  
18 office?

19 A. Most do. So the normal process  
20 is, because with that chain of command,  
21 there are also a couple of units that would  
22 report directly to the police commissioner,  
23 so certainly those transfers aren't going  
24 through our office. They will come to us  
25 basically as an FYY, the PC has already

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approved this. But for like cross-bureau stuff, Criminal Justice Bureau basically the people who manage our Central Booking and arrest processing system, they want to pick up a sergeant. The sergeant is coming through Patrol. That will come up through us. We will have personnel do the staffing analysis. We will then make a recommendation to the police commissioner. And again, PC is the final arbiter on a lot of stuff, including that.

Q. Understood. Your answers are great because you cut off a lot of my next questions.

A. So actually, except executives. Executives follow a different process.

Q. That was my next question.

Forgive me, if you need water, anything, please let me know, and we will have it brought to you immediately.

A. Okay, great. Thank you.

Q. So with the executives, executives for the record are rank of captain?

1 Pontillo

2 A. Captain and above.

3 Q. So it includes captain and  
4 above, correct?

5 A. Yes. So the one distinction is  
6 that the rank of captain is a civil service  
7 title. So the way you become a captain in  
8 the NYPD is that you take a competitive  
9 promotional civil service exam, and then as  
10 we promote people, we go down the list.

11 Q. Just like every sergeant and  
12 lieutenant and everybody else?

13 A. Right.

14 Q. Understood.

15 So once you reach the rank of  
16 captain, how many different ways can someone  
17 be promoted?

18 A. So there is one way, and that's  
19 if the police commissioner decides to  
20 promote you. The police commissioner is the  
21 final authority. People will make  
22 recommendations to him and we have a process  
23 in place how those recommendations get to  
24 the police commissioner, but by law, the  
25 police commissioner is the authority or the

1 Pontillo

2 final say on executive promotions, so only  
3 he can promote somebody above the rank of  
4 captain and it's up to his discretion. He  
5 can have a reason or no reason and typically  
6 doesn't explain why he promotes who he  
7 promotes.

8 Q. How often does the police  
9 commissioner see or authorize these  
10 promotions or denies these promotions?

11 A. It depends. There are a number  
12 of factors that weigh into when promotions  
13 get done.

14 The most significant is the  
15 budget. So we have a \$5.6 billion annual  
16 operating budget. Somewhere 93, 94 percent  
17 of that is for personnel services, meaning  
18 salary, fringe, pension payments. It's a  
19 whole host of -- but it's all personnel  
20 expense.

21 The ranks of captain and above  
22 are fixed to align in the budget. So if we  
23 don't have the money in the head count, if  
24 we don't have a vacancy in the head count,  
25 have the money, have the line item to



1 Pontillo

2 promote, say, a deputy inspector, then we  
3 can't unless we find the money elsewhere,  
4 and typically that would mean like giving up  
5 like two police officers, trading two POs to  
6 have funding for -- you know, there is no  
7 new money coming in. So that complicates  
8 it.

9 At one point, back in like circa  
10 2008, there was -- the union for a captain  
11 through deputy chief is the Captains  
12 Endowment Association. They had a contract  
13 back in, I think it was, 2008 that fixed the  
14 number of spots, deputy inspector, inspector  
15 and deputy chief as a percentage of the  
16 population of captains. They negotiated  
17 that in the collective bargaining. Their  
18 thinking was we want a guarantee that we  
19 have a certain number of minimum spots and  
20 they don't go away or the money gets  
21 reallocated to something else, so we want to  
22 make sure we have -- and it's a small  
23 number.

24 I think executives in total,  
25 captains and above, is about 4 percent of

1 Pontillo

2 the Police Department, I think DI and above  
3 is about 2 percent, chiefs are about .3  
4 percent and above of the total agency. So  
5 very, very few spots at the top, few  
6 competitive, few vacancies.

7 Also, attrition plays in. So  
8 years prior to this current year, we had a  
9 fairly steady rate of attrition. So every  
10 year or every month or couple of months  
11 we've had vacancies in deputy inspector,  
12 inspector and deputy chief. We haven't had  
13 that this year. Over the last five or six  
14 years, we've averaged, I think, 11 deputy  
15 chiefs, 23 inspectors and 37 deputy  
16 inspectors promoted per year. That's an  
17 average.

18 Q. Promoted?

19 A. Yes, to those ranks. So 11  
20 people were made deputy chiefs.

21 This year we're at four deputy  
22 chiefs, nine inspectors and eight deputy  
23 inspectors. Attrition has slowed down  
24 considerably. I haven't looked at it in  
25 more than maybe about two months now because

1 Pontillo

2 there has been no need to. I get a monthly  
3 report on staffing, and we don't have any  
4 vacancies in deputy chief. As of a couple  
5 of months, we had no inspector vacancies. I  
6 think only one or two DI vacancies. And  
7 since we don't have the vacancies, we have  
8 not had an executive promotion since June.

9 So we generally have promotions  
10 monthly. There has been a July promotion  
11 ceremony and an August promotion ceremony.  
12 We have promoted civilians, both  
13 discretionary and civil service titles.  
14 We've also promoted uniformed members of the  
15 service, sergeants, lieutenants, but those  
16 are all service ranks. We haven't promoted  
17 any discretionaries because we don't have  
18 the vacancies in head count. I think we're  
19 expecting we will probably do some civilian  
20 and some uniform executives in September,  
21 but I'm not sure yet.

22 Q. Do you have any idea as to why  
23 the slowdown?

24 A. No. The job has been fairly  
25 stable. I think Commission Bratton left in

1 Pontillo

2 the fall of '15, September 16th or 17th.  
3 Commissioner O'Neill became police  
4 commissioner. He made a few changes  
5 initially. Some other people just left on  
6 their own. But the job has been fairly  
7 stable since then.

8 Also, higher executives don't  
9 retire all that often. So a police officer  
10 who retires, their average tenure is 24  
11 years. A three star chief who retires, the  
12 average tenure is 38 years. Therefore, a  
13 two star and a one star, it goes down like  
14 35, 36. But even inspector and deputy  
15 inspector it's up there. Much more of a  
16 turnover in the lower ranks, much less of a  
17 turnover in upper ranks generally, but just  
18 in the last year and a half attrition has  
19 slowed down quite a bit.

20 Q. What would you say is the  
21 average, whether monthly or yearly,  
22 executive retirement prior to, and that is  
23 all ranks, just ballparking?

24 MS. BLAIR: Let him finish the  
25 question.

1 Pontillo

2 Q. I was just going to say, just to  
3 make it easier ballpark it, whether you want  
4 to do it monthly or yearly, the total of  
5 retirements for executives?

6 A. I just looked at this for last  
7 year. I think it was around 30-ish for the  
8 year in 2018. We can get --

9 Q. 30-ish, right?

10 A. About 30 -- yeah, my  
11 recollection isn't very strong on this one.  
12 I mean, we can talk about it.

13 Q. That's fine.

14 Just again for the record, could  
15 you provide me the ranks captain going  
16 forward? Above, I should say?

17 A. Executives, the first, what we  
18 consider an executive rank is captain. As I  
19 said, that is a civil service rank. Above  
20 the rank of captain, the promotions are  
21 discretionary, meaning there is no civil  
22 service exam, it's up to the police  
23 commissioner and only the police  
24 commissioner can promote. The next rank up  
25 is deputy inspector. And then rank above

1 Pontillo

2 that is inspector and then deputy chief.

3 And then above deputy chief is assistant  
4 chief. And after assistant chief is chief  
5 and that's the three-star chief, and those  
6 are the bureau chiefs, so chief of patrol,  
7 chief of detectives.

8 Q. That starts at three star?

9 A. Yes.

10 Q. So what would it be, three star,  
11 two star, one star?

12 A. Yes. So actually there is one  
13 four-star chief, the chief of department,  
14 and he's in command of all the operational  
15 bureaus. So all the three-star chiefs who  
16 command Patrol, Transit, Housing, Detectives  
17 all report to chief of the department.

18 Q. Okay.

19 A. And three-star chiefs run  
20 bureaus, so the Patrol Bureau, the Detective  
21 Bureau under the first dep. The training  
22 bureau and personnel bureau are commanded by  
23 three-star chiefs.

24 Q. How many three-star chiefs might  
25 be there in NYPD?

1 Pontillo

2 A. I don't remember. It's under  
3 20.

4 Q. Approximate, under 20?

5 A. Yes. I think it's 12.

6 Q. What is the ranking above chief  
7 of the department?

8 A. Police commissioner.

9 Q. Police commissioner?

10 A. Yes. And the police  
11 commissioner is appointed by the mayor.  
12 That's governed by city charter. It's a  
13 five-year term.

14 Q. We don't have to go above that.  
15 My civil service exams are a little, you  
16 know...

17 A. Yes.

18 Q. You said promotions above  
19 captain are discretionary?

20 A. Yes.

21 Q. What is the procedure for a  
22 captain to become a deputy inspector in that  
23 capacity?

24 A. Sure. So currently there is a  
25 process in place whereby people can request

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to be considered and also for executives like bureau chiefs and deputy commissioners to put forth names to the police commissioner to essentially get nominees on the PC's radar screen with their recommendations so when the PC is making his decisions he will have greater insight into the candidate pool and whether or not and to what extent these individual's supervisors and the bureau chief have or have not recommended this person.

So just looking at the most recent year, the way it began, late last year, we began the executive advancement process for 2019. We put out a message department-wide that the next round or the 2019 executive advancement process is beginning.

And then we provided some information about what that looks like. And essentially there are criteria. So in order to be considered for promotion, a captain has to have at least two years in rank. A deputy inspector and inspector has to have



1 Pontillo

2 at least one and a half year in rank.

3 They then have to go online on  
4 our NYPD intranet. On our main portal page,  
5 there is an application tab, you would click  
6 on that. There is an executive advancement  
7 portal. You go into that. And each  
8 applicant has to indicate their desire to be  
9 considered for promotion. They have to  
10 upload and submit a resume, a maximum of two  
11 pages, and a maximum one-page personal  
12 statement. At one point we provided a  
13 template for resume online so it made it  
14 easier.

15 They have to answer three  
16 questions. Essentially, would you be  
17 willing to be transferred if it meant  
18 getting promoted, would you be interested in  
19 a command assignment as the CO of a precinct  
20 transit district or housing PSA or finally  
21 do you want to stay in your present command  
22 or are you amenable to change?

23 After you do that, and then this  
24 year for the first time, we included what  
25 used to be a separate process to indicate

Pontillo

your preference to be a CO or not. So if you've never been a CO or even if you have, I want to be CO of an operational command, precinct, transit district, PSA because the thought was that prior to this process, it could be a topdown, but we wanted to give people a voice up to say this is what I want to do or I don't want to do. I want to throw my hat in the ring for promotion, but I want to say in my current command, so I think I should get promoted where I am. So to give people the ability to state their preference.

That will be open for some period of time. This year we had it open I think through the end of November, and we ended up extending it out another week just because of the holiday. We figured it would give people more of a chance, and cops generally take to the last minute to do things anyway. So we said, you know what, let's push it out a week past Thanksgiving. So we put out a notice that we were extending it and kept it open and then we

1 Pontillo

2 get all the applicants.

3 Once we get everything, we check  
4 everything and make sure it's accurate, it's  
5 complete, it's all there, we then put  
6 together the packages. So the person's,  
7 their resume, their personal statement, how  
8 they answered the questions in terms of what  
9 their preferences are. We then send those  
10 to the appropriate bureau chief. So if it's  
11 a captain in the Detective Bureau who is  
12 requesting consideration to promotion to  
13 deputy inspector, we would send that package  
14 to the chief of detectives. We send a cover  
15 letter.

16 We also apportion a number of  
17 slots that each bureau has. So what we do  
18 is each year we look back historically how  
19 many promotions we made in each rank over  
20 the last several years. And like I said  
21 before, for last six, it has been 11 -- the  
22 average has been 11 deputy chiefs, 23 full  
23 inspectors and 37 deputy inspectors.

24 Q. 37, you said?

25 A. Yes.

1 Pontillo

2 So based upon that, we apportion  
3 a number of slots for each bureau chief to  
4 make recommendations based upon their  
5 percentage of the population of the  
6 department. So how many executives do you  
7 have, okay, that's a certain percentage of  
8 the overall population, and based on what  
9 we've done historically and what we expect  
10 to attrit (sic) out this year, it's an  
11 estimate, we think we'll have this many  
12 vacancies.

13 Now, we give the bureaus more  
14 slots than we have actual vacancies for  
15 because there is this elimination process.  
16 We know that the chief of detectives is  
17 going to make a recommendation that is going  
18 to go the chief of department. The chief of  
19 department may want to review that and may  
20 or may not submit some or all of those names  
21 going forward. So we give them more slots  
22 than we have actual vacancies for just to  
23 cast a wider net and expand the pool.

24 We collect all of those back.  
25 Once we have completed packages from the

1 Pontillo

2 bureau chiefs and deputy commissioners --  
3 some bureaus are headed by civilians; for  
4 example, Risk Management is now headed by a  
5 deputy commissioner. It's either deputy  
6 commissioner or bureau chief or three-star  
7 chief heads a bureau. So we will get all of  
8 those packages back, we will check them,  
9 sometimes there are discrepancies, something  
10 is left out, but then we compile them and  
11 they go to the overhead commands.

12 So ultimately the way the  
13 candidate pool kind of gets filtered to a  
14 smaller batch of people as it goes through  
15 the chain of command, so like I said, there  
16 are essentially three chains of commands in  
17 the Police Department. You have the chief  
18 of the department who commands the  
19 operational bureaus. You have the first  
20 deputy commissioner who oversees all of the  
21 support bureaus. And then the police  
22 commissioner has a certain -- there are  
23 certain units that would report directly to  
24 him, information technology, management and  
25 budget, for example.

1 Pontillo

2 So prior to a promotion, when we  
3 expect that we will be promoting executives,  
4 based upon the number of vacancies that we  
5 have, the first deputy commissioner will  
6 meet with the chief of department and the  
7 chief of staff, and they will discuss who is  
8 on the promotion list in terms of who is  
9 recommended by the bureaus. So ultimately  
10 what happens is everybody -- and we call  
11 this tiers now, so Tier 1, 2 and 3 on what  
12 is ultimately a promotional eligible grid of  
13 names.

14 Q. Basically ranked, these are who  
15 I would say first, second and third in order  
16 of promotion, it goes up the chain or down  
17 the chain and gets weeded out from there?

18 A. Right, so there is kind of a  
19 vetting process at each intermediate level.  
20 The first basic level is everybody who is  
21 eligible who applies. The next level or  
22 kind of the first tier of recommendations is  
23 the bureau chief recommending who the bureau  
24 chief thinks is eligible based upon the  
25 allotment they have been given based upon

1 Pontillo

2 how many people we expect to promote that  
3 year, which is based upon our history of  
4 promotions and prior years.

5 So after bureau chiefs, then it  
6 goes up to the person they report to,  
7 whether it's the first deputy commissioner,  
8 the chief of staff in the Police  
9 Commissioner's Office or the chief of  
10 department. They then have a certain number  
11 of slots that they are given, which is again  
12 a little bit more than the total number of  
13 vacancies we expect to have, but less than  
14 what their subordinate commands have. So  
15 again, it's sort of this culling process to  
16 narrow the group.

17 They then make their  
18 recommendations as to who their top picks  
19 are. And that is Tier 1 of the grid. Those  
20 are the people who are eligible, applied,  
21 recommended by their bureau chief. It gets  
22 to their overheads. So in my chain of  
23 command, the first deputy commissioner, and  
24 first deputy commissioner has a certain  
25 number of slots, and, you know, this is his

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2 recommendation for deputy chief for full  
3 inspector for this year. And that's Tier 1  
4 of the grid.

5 So now, fast forward, so if, for  
6 example, in September there are going to be  
7 executive promotions based upon what we can  
8 afford in our budget, the first deputy  
9 commissioner will meet with the chief of the  
10 department and with the chief of staff.  
11 They will go over the grid. They will look  
12 at everybody who is Tier 1 first. They will  
13 discuss, and depending upon how many  
14 vacancies they have, they may or may not  
15 make recommendations out of Tier 1.  
16 Sometimes they go into Tier 2. We've even  
17 had people who are Tier 3 who have gotten  
18 promoted historically.

19 And we explain that in the  
20 messages that have gone out. We put them  
21 out through FINEST message, which is our  
22 internal version of a teletype system, as  
23 well as e-mails. We explain that ultimately  
24 the police commissioner reserves the right  
25 to promote anybody he wants and that the



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situation may change over the course of a year, so from the time you first submit your resume and your package and say November or December, fast-forward the following September, things are going to very, very different in the Police Department. You may have moved into a different assignment or somebody else may have moved into an assignment because they were the best qualified for that given their skill set and now that is a position that warrants a promotion. So there are a lot of variables that could affect when somebody gets promoted and why and how they get recommended.

But that kind of hierarchical process whereby there is like everybody who is eligible going up to the people who are the number one choices based on the allocation that is given to them, the first deputy commissioner, the chief of department and the chief of staff is a way to get people on the police commissioner's radar screen. Like, hey, here is somebody who is

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eligible, they applied, they put in, their bureau chief recommended them, the first deputy commissioner recommended them, and it's the first dep's number one person for deputy chief. That gets presented to the police commissioner so he could look at that, he could factor in, okay, this is who applied, this is the job they're in, this person was recommended. You know, he may solicit other counsel, he may consider other factors because it is his discretion ultimately, but the process is designed to get a very, very broad pool of people into the mix to get people on his radar screen.

So he's aware of -- because the longer the police commissioner is the police commissioner, the fewer and fewer captains he knows because more people are getting promoted all the time through the civil service process and people are moving, so he becomes a little bit more removed from that process. So that's why the process is in its current state now.

Q. Understood.

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2 How often would you say people,  
3 I guess it would be the police commissioner,  
4 would skip over people in the first tier to  
5 promote people in the second tier or those  
6 behind him?

7 A. It happens that Tier 1 and Tier  
8 2 is not a guarantee that anybody will get  
9 promoted, but historically it's a very good  
10 indicator of who actually gets promoted.

11 Q. Do the people in Tier 1 or Tier  
12 2 know they're in that tier?

13 A. Now they do. So this is kind of  
14 a new process that goes back to -- the first  
15 iteration of this was in 2016. It was a  
16 change from the prior promotion process and  
17 it was designed to give more feedback. Now  
18 the original version in 2016, there was  
19 supposed to be feedback and feedback was not  
20 always given. So there this past year what  
21 we've done is mandated feedback and created  
22 a tracking system to make sure that  
23 everybody got feedback that was supposed to  
24 get feedback. So we spelled that out in  
25 directives that went out. So again through

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2 FINEST and through e-mails and the audience  
3 of some of the e-mails varied.

4 So there are e-mails directed at  
5 eligible people describing the process to  
6 them and telling them what to do, along with  
7 the FINEST messages. But we also sent  
8 e-mails to higher ranking executives, saying  
9 here is what your subordinates were told and  
10 here is what is expected of you now.

11 So then to support that, we did  
12 an executive conference back in March of  
13 this year, and we had -- it was for all  
14 captains and above and all civilian deputy  
15 directors above at the police academy,  
16 day-long training, guest speakers, but there  
17 were breakout sessions, and one of the  
18 breakout sessions was on how to give  
19 feedback to subordinates. And so the  
20 direction was if you're one of the  
21 executives who have been tasked of giving  
22 feedback, you should sign up and attend this  
23 breakout session.

24 And then to further support  
25 that, beginning -- we were preparing for in

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2 April, either the end of April or certainly  
3 by the beginning of May, we conducted  
4 feedback workshops in police headquarters  
5 and every two- and three-star chief who was  
6 responsible for giving feedback came to a  
7 class and it was about two hours and it was  
8 an overview of the promotion process and it  
9 was basically direction on how to give  
10 feedback.

11 MR. ALBANESE: Let's go off the  
12 record.

13 (Recess taken.)

14 Q. How often are there individuals  
15 on the three tiers that don't get promoted  
16 in a given calendar year?

17 A. There are some. There are some  
18 Tier 1 people who don't get promoted. There  
19 are Tier 2 people that don't get promoted.  
20 And certainly Tier 3. Again, given the  
21 issue with the head count and number of  
22 vacancies and money in the budget to make  
23 promotions. Like I said, for example, the  
24 average over the last six years, 11 deputy  
25 chiefs. This year we've done four. We

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2 probably won't make 11 this year. With only  
3 eight deputy inspectors promoted, we're not  
4 going to get to 37 by the end of the year.  
5 There is just no room in the head count. So  
6 that means a lot of Tier 1, Tier 2 and Tier  
7 3 people will not get promoted.

8 Q. Do you say that happens every  
9 year?

10 A. Every year, and it fluctuates a  
11 little based upon the budget and the head  
12 count and what we can actually promote to.  
13 Yeah, it's designed to be more inclusive and  
14 get more people than the actual number of  
15 vacancies we expect. You know, Tier 1 is  
16 close to the historical number of vacancies  
17 in terms of the number of spots in each one.  
18 Tier 2 and 3, generally, no, but like I  
19 said, situations change sometimes over the  
20 course of the year. But generally my  
21 experience has been that not everybody in  
22 Tier 1, certainly Tier 2 and definitely Tier  
23 3 get promoted.

24 Q. Are people who are passed over  
25 for promotions in Tier 1 and Tier 2 treated

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2 differently from people in Tier 3 who just  
3 hadn't reached that number?

4 A. No, except that the feedback  
5 from their bureau chief would be different.  
6 So when the bureau chief speaks to a person  
7 who they recommended and then the chief of  
8 the department recommended as part of his  
9 allotment, so putting that person into Tier  
10 1, that's a great conversation. I  
11 recommended you and the chief of department  
12 agrees and he recommended you as well and  
13 you're in Tier 1, so you're in a very good  
14 position to be promoted this year, keep up  
15 the good work.

16 As opposed to Tier 2, I  
17 recommended you, but you didn't make the  
18 next cut because of the limited number of  
19 spots and it's much more competitive, but  
20 keep doing what you you're doing. And then  
21 Tier 3 could be a whole host of reasons why  
22 they didn't. It could just be, hey, you're  
23 great, other people are better, more  
24 deserving or you need improvement in certain  
25 areas or you haven't been in command long

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2 enough. I mean, whole host of reasons why a  
3 bureau chief could give to a person  
4 depending upon how they assess their  
5 personnel.

6 Q. Understood.

7 For those individuals who are  
8 passed over for a promotion, do they have to  
9 reapply the following year?

10 A. Yes. So soon, probably by  
11 October or November, we will put out the  
12 first notice that the 2020 executive  
13 advancement process will begin and we will  
14 ask people to do basically what they have a  
15 done last year. If they're interested, they  
16 will have to go online, submit an updated  
17 resume, personal statement, answer questions  
18 about their career preference and then we  
19 will repeat that whole process again.

20 Q. Just to make sure, if you, "you"  
21 being the NYPD, promote 11 deputy chiefs and  
22 you have number 12, 13, 14 on the list,  
23 obviously you don't get to those  
24 individuals --

25 A. Yes.



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2 Q. -- do they have to reapply?

3 A. Yes. We basically erase  
4 everything and start all over again every  
5 year.

6 Q. How many people do you believe  
7 on average would reapply if they have been  
8 passed over for a promotion?

9 A. I've never done the analysis;  
10 although, I can say from looking at this  
11 year's grid and last year's grid, I  
12 recognize a lot of names repeating, so  
13 people do reapply.

14 Q. I believe you said that this is  
15 a more recent aspect of promotion?

16 A. Yes.

17 Q. What was the system before that?

18 A. So there was a variation of  
19 this. It began in 2016. So at the end of  
20 2015 an announcement was made that there was  
21 going to be a change to the executive  
22 advancement process, and the version that  
23 came out for 2016, the notice went out at  
24 the end of '15, but it was for calendar  
25 2016. It was similar. You had to go online

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2 to the portal, you had to submit your  
3 resume. There was peer voting and people  
4 could vote for people in their own rank and  
5 ranks below them. So as a chief, I could  
6 vote for captains, DIs, inspectors and  
7 chiefs.

8 Q. Would that be similar in nature  
9 to being recommended for a promotion or is  
10 that --

11 A. No, it's more of a popular vote.  
12 The thought being -- and, you know, we  
13 reconsider this every year because we still  
14 do the voting, except now that you don't get  
15 to vote for people in your own rank. You  
16 get to vote to people below your rank. It's  
17 a way to just add more information to the  
18 conversation.

19 Q. Does an individual have to put  
20 themselves into the portal for the peer  
21 voting or is it a situation where people can  
22 nominate and then vote?

23 A. People could vote for anybody.  
24 You know, when they get told that they can  
25 vote, when they go online, it's on the

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2 portal again, and, you know, you log in with  
3 your credentials, so it recognizes you, so  
4 it knows who is making the vote. There is a  
5 list of who is eligible and who has  
6 submitted, but quite frankly you could write  
7 somebody in if you wanted to.

8 MS. BLAIR: I just want to  
9 clarify, that's for this year  
10 currently or are you talking about  
11 2016?

12 THE WITNESS: We do the voting  
13 this year. We did it this year as  
14 well, except it was only people --  
15 ranks below you. Back in 2016, you  
16 could vote for peers as well as people  
17 below you.

18 Q. Understood.

19 A. And then there was a board that  
20 looked at all the peer voting and then  
21 looked at all the applications and then made  
22 a recommendation to the police commissioner.  
23 And the board members were three ranks  
24 higher than the applicants. For example,  
25 all of the captains who submitted for

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2 consideration to become deputy inspector,  
3 the board was -- consisted of one-star  
4 chiefs and they were selected by the Police  
5 Commissioner's Office. Then their  
6 recommendations, along with the resumes and  
7 voting results, all went to the police  
8 commissioner.

9 Q. Understood.

10 What was the system in place  
11 prior to 2016?

12 A. So prior to 2016, and this goes  
13 back to the Kelly administration, and it  
14 kind of carried over into the Kerik  
15 administration a little bit, so there was a  
16 process in place where there was peer  
17 voting, you could vote for -- I used to get  
18 the ballots. You would get a paper roster  
19 of every executive on the job there.

20 Q. That must be a pretty big  
21 roster?

22 A. It was. It would fold out and  
23 it was from like a dot matrix paper and you  
24 would get this one and a half inch thick and  
25 you would fold it, unfold it because it was

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2 by rank and it was by assignment.

3 Q. Reminds me of grade school.

4 A. Yeah, I mean, that's what it  
5 was. As I recall, it was you could vote up  
6 to five captains for deputy inspector and up  
7 to four deputy inspectors for inspector and  
8 then up to three inspector to chief. And  
9 you would seal it in an envelope and mail  
10 into the First Deputy Commissioner's Office.  
11 So there was a period of time when -- and  
12 then there was interviews. So the Police  
13 Commissioner's Office would select who would  
14 go for an interview. And that could be  
15 based in part upon the voting. It also  
16 could be based in part upon the assignment,  
17 but back then, it was also contingent on  
18 that contract provision that indicated the  
19 number of vacancies for each rank.

20 Since that contract, that's gone  
21 away. So the CEA is now trying to get that  
22 back and said we never gave that up, but  
23 they omitted it from the last couple of  
24 contracts. So that may or may not be a  
25 collective bargaining right. Nobody knows.

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2 And that may get litigated at some point.

3 So right now it's purely  
4 monetary based upon the budget and what  
5 we're allocated for in the budget in terms  
6 of head count. But the voting would be  
7 collected by the First Deputy Commissioner's  
8 Office. The First Deputy Commissioner's  
9 Office would schedule all the interviews.  
10 And it was a panel of chiefs essentially  
11 interviewing people who came in. People  
12 were notified by the Police Commissioner's  
13 Office to appear for the interview. And  
14 then the staff and the First Dep's Office  
15 would compile the voting results.

16 They would collect -- there were  
17 basically evaluation sheets or score sheets  
18 prepared by the members of that interview  
19 panel. They would take all that, package it  
20 altogether and give it to the Police  
21 Commissioner's Office, and then Police  
22 Commissioner Kelly would ultimately decide  
23 who got promoted.

24 Q. Correct me if I'm wrong, the  
25 only way to be promoted prior to 2016 is

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2 this peer voting system?

3 A. Well, no. Peer voting was an  
4 element of it. My understanding is the  
5 thought process was the same. It was to  
6 highlight people and to get people to raise  
7 awareness about people that the police  
8 commissioner may not have a lot awareness  
9 of. So it was a factor to be considered,  
10 but it was not in any way controlling. It  
11 did determine who got an interview. It did  
12 not determine who got promoted. It was just  
13 a factor.

14 So the package that would get  
15 put together would be the individual, it  
16 would be how many votes they got, if any, it  
17 would be results of their interview and how  
18 they scored in the interview, and all that  
19 would go to the police commissioner. It was  
20 something he would use when considering  
21 promotions, but it wasn't controlling.

22 Q. So what was some of the other  
23 ways before the portal existed that a  
24 captain, an inspector would be considered  
25 for a promotion?

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2 A. So during the Kelly  
3 administration, that was it, Police  
4 Commissioner Kelly decided. He considered  
5 the material that was provided to him  
6 regarding the voting and the interview  
7 process and how people did on the  
8 interviews. Ultimately, if he used other  
9 criteria, I would not know, again, because  
10 it's discretionary and it's his prerogative,  
11 so, you know, he could have considered other  
12 things.

13 Q. Did individuals have to put in  
14 their resume or was it also recommended from  
15 their higher-ups, their supervisors?

16 A. No. Back then, the Kelly  
17 process, no, there was no resume. It was  
18 basically they had your career profile, you  
19 know, your personnel record with everything  
20 you've done, every place you have been, your  
21 skills, education, job experience, and then  
22 the results of the peer voting and the  
23 results of the interview panel.

24 Q. What did it take for an  
25 individual to get to that interview panel?



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2 A. That I don't know. You were  
3 notified by the Police Commissioner's  
4 Office. So, for example, from my own  
5 experience in 2004, I received a phone call  
6 from one of the police commissioner's  
7 secretary notifying me to appear at a  
8 certain date and time at First Deputy  
9 Commissioner's Office for a promotional  
10 interview.

11 Q. Prior to that, you had no idea  
12 you were being considered?

13 A. Considered, right, no.

14 Q. How familiar are you with the  
15 promotion process prior to 2016?

16 A. I was not involved in it other  
17 than as an executive. I would receive those  
18 packages in the mail with the roster of all  
19 executives and voting sheet because it was a  
20 paper process. So 2016 is the first time it  
21 went online and it was paperless. But as an  
22 executive in different ranks every year I  
23 would get the ballot and that printout  
24 listing all the executives. And it gave  
25 information such as their promotion date,

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2 their time in command, the date of their  
3 current rank.

4 Q. Were individuals -- strike that,  
5 please.

6 Would an individual's time per  
7 rank go into consideration?

8 A. I don't know. I mean, you know,  
9 when Police Commissioner Kelly was a police  
10 commissioner, he could have considered all  
11 of that. Certainly it's information he had  
12 available to him. It was part of that  
13 process.

14 Q. Other than Police Commissioner  
15 Kelly, who else would consider these  
16 promotions at that time during Police  
17 Commissioner Kelly's tenure?

18 A. So everything went to him.  
19 Everything went to Police Commissioner  
20 Kelly. So the Office of the First Deputy  
21 Commissioner facilitated a process, you  
22 know, conducting the interviews and mailing  
23 out the ballots and collecting them back,  
24 but everything went to the Police  
25 Commissioner's Office.

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2 MR. ALBANESE: Do you want to  
3 take ten minutes.

4 (Recess.)

5 Q. Since 2016 we've discussed Tier  
6 1, 2 and 3 and the different slots that are  
7 available for promotion.

8 When taking into those tiers and  
9 slots for promotion, does the NYPD and the  
10 police commissioner and those below him take  
11 into account an individual's race, creed,  
12 into promotion aspects?

13 A. No, it's not a disqualifier in  
14 any way certainly. It's not a factor that  
15 weighs in favor of or against anybody. I  
16 mean, I could only speak to the process that  
17 I'm familiar with in my bureau certainly or  
18 my chain of command and the way the first  
19 deputy commissioner analyzes these things.

20 So when we get the  
21 recommendations from our subordinate bureaus  
22 and they come up to us, the first deputy  
23 commissioner will evaluate the individual,  
24 their career, their accomplishments, their  
25 capabilities. All of the executives who

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2 were recommended by their bureau chiefs,  
3 before the first deputy commissioner made  
4 his selection for Tier 1, he interviewed  
5 everybody. So he had a good handle on who  
6 they were, got to assess their demeanor,  
7 their communication skills, a little bit  
8 about their judgment, in addition to their  
9 kind of paper personnel record and their  
10 written statement and resume.

11 Q. For the promotions for the rank  
12 of captain -- above captain, does the NYPD  
13 have an affirmative action type system in  
14 place?

15 A. So, no, there is no formal  
16 system or program in place.

17 Q. Is there an informal system?

18 A. No. I mean, it's something we  
19 look at. So diversity is always a question  
20 in terms of how we're doing. It's something  
21 that we get challenged on periodically. So  
22 our goal is to have as diverse of a  
23 workforce as possible. But that said, there  
24 are no requirements for promotion or  
25 advancement by race.

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2 Q. Please forgive me. I didn't  
3 think of it meant as a requirement. I meant  
4 is it a consideration that the NYPD would  
5 want a most diverse --

6 A. It's a consideration that we  
7 want a diverse workforce and our recruitment  
8 goes to that. You know, we try to recruit  
9 in every community and try to reach every  
10 community to try to get people to come on  
11 the job. But in terms of promotions, I have  
12 never -- nothing formal, nothing informal,  
13 and I have never seen anyone make a decision  
14 that I've been involved in the discussions  
15 where race was a factor in making that  
16 decision.

17 Q. Do you know or could you guess  
18 what the breakdown is with regard to --  
19 between the ranks, meaning chief, assistant  
20 chief, deputy chief, what is the breakdown  
21 is by race, gender, creed, in that capacity?

22 MS. BLAIR: To your knowledge.

23 Q. To your knowledge?

24 A. I don't have that information,  
25 no.

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2 Q. In your preparation for this  
3 deposition, did you review any documents or  
4 have any conversations other than what would  
5 be considered with counsel?

6 A. No, just counsel.

7 Q. Does that go for the documents  
8 as well, did you review any documents?

9 A. No, I've not reviewed documents  
10 for this. But some of the documents that  
11 were in the exhibits, I have seen  
12 periodically since they were first  
13 published. Because in addition to  
14 everything else going on with the process,  
15 we have a discretionary promotion working  
16 group that is chaired by the chief of staff  
17 and it includes a number of internal  
18 stakeholders, Professional Development,  
19 Police Commissioner's Office, my office,  
20 looking at the whole process and basically  
21 coming up with recommendations for the next  
22 round; like are we going to change anything,  
23 if so, what, looking for feedback from  
24 people currently.

25 So, like, for example, all of

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the e-mails that went out this year were socialized internally. You know, we came up with a draft, we had input from a number of stakeholders before sending them out because we wanted to make sure we were sending out a clear message and getting out as much information as possible. But we've had this working group that meets pretty much monthly. I think we have a meeting this week, as a matter of fact. And we're looking at the whole process. So we may make changes for next year in terms of the mechanics of how it's done.

Q. The discretionary working group is more like a research function and they don't have any active participation, they may make recommendations, but don't make any decisions?

A. Right, that's right.

Q. You mentioned "stakeholders." What is "stakeholders"?

A. So the people who would be involved in the process, with the management of the process. So, for example, my office

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because we manage the logistics of this whole process. We announce the opening of the executive advancement process. We work with the Information Technology Bureau to create the portal and open it up and then collect all the data. We put the packages together. We decide on the number of slots we're going to give each bureau and then each of the main three players in terms of how many recommendations they're going to get based upon current attrition rates and looking back historically how many people have been promoted in each rank. So we are a stakeholder, the Police Commissioner's Office.

Now, there's the chief of staff and there is another chief who runs essentially special projects in that office, so a project like this. We have an executive director, Fred Tanner, who heads our Office of Professional Development. He's a key stakeholder in this. We have an Office of Equity and Inclusion. They're involved in this as well as our Personnel



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2 Bureau, since they manage all personnel  
3 moves and they have to put in motion all the  
4 things that kind of come out of this. When  
5 somebody gets transferred, promoted, they're  
6 responsible for the mechanics of that  
7 process.

8 Q. So these are the key  
9 stakeholders in that process?

10 A. Essentially the ones who kind of  
11 bear the burden of getting the information  
12 out about the executive process and then  
13 managing the process going forward. So  
14 everything I just described, putting out the  
15 information, collecting all the applications  
16 back, vetting them, getting them to the  
17 police commissioner. So all of the people  
18 involved in that process.

19 Q. Thank you.

20 Are you familiar with the  
21 complaint that Captain Vucinaj filed in this  
22 action?

23 A. Again, from speaking to counsel.

24 Q. Did you read the complaint?

25 A. I did not.

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2 Q. How long, to your knowledge,  
3 would an individual maintain the rank of  
4 captain?

5 A. It depends. I know people who  
6 retired after being captains for many, many  
7 years. Historically very few captains have  
8 ever gotten promoted beyond captain. It's a  
9 little bit different now. Over the last  
10 several years, we have seen more getting  
11 promoted to deputy inspector, but there is  
12 no set or normal time period for somebody to  
13 be a captain and then get promoted. Some  
14 never get promoted. Some get promoted at  
15 different time periods in their career, on  
16 their career trajectory, but that often has  
17 more to do with their particular assignment,  
18 what they're involved in, what they've done.  
19 So it varies, but there is no set time  
20 period.

21 Q. Once an individual reaches the  
22 rank of captain or above, you have mentioned  
23 that they have tendency to stay in the  
24 department longer.

25 How long would a -- how many

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2 times -- strike that.

3 How many times would an  
4 individual be promoted after captain before  
5 retiring, do you think?

6 A. It could vary greatly, again  
7 depending upon the nature of their  
8 assignment, what their individual preference  
9 is, any accomplishments they've had, the  
10 number of vacancies in a given year. Many,  
11 many variables. Again, there is no set  
12 number. I'm sure, I haven't looked at it,  
13 we can calculate averages, but their career  
14 path for people can be very, very different.  
15 A lot of it has to do with what they even  
16 self-select to do.

17 Q. Understood.

18 Within the promotion process,  
19 how much weight is given to a person's  
20 disciplinary history?

21 A. It's a factor, but it's not  
22 determinative. We have had people who have  
23 had discipline and have gotten promoted.  
24 It's part of the whole person. So it would  
25 be part of that employment history. That's

1 Pontillo

2 part of the information that is reviewed  
3 when somebody is being considered.

4 Q. At any given point in time does  
5 a person's disciplinary history bar them  
6 from promotion?

7 A. It can. Again, we're taking  
8 about executives because it's the police  
9 commissioner's discretion. The police  
10 commissioner could look at somebody's whole  
11 history, it could be discipline, it could be  
12 other factors, and decide not to promote  
13 somebody or not consider them at present  
14 time based upon their career including  
15 discipline.

16 Within the civil service ranks,  
17 even for a civil service promotion, if you  
18 have had serious discipline within a certain  
19 time period, you may get held up for  
20 promotion, even though you're next on the  
21 list and we're promoting. So say, for  
22 example, sergeants, if you've had recent  
23 serious discipline, and we have criteria for  
24 what this is, your promotion can be held up.  
25 You'll have to go in front of a board and

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2 they will make a recommendation as to  
3 whether or not you should be promoted.

4 So with the civil service ranks,  
5 it's more of a formal process. With the  
6 discretionary promotions, because it's the  
7 police commissioner's discretion, it's a  
8 factor that certainly the information is  
9 available to him and it's something he could  
10 consider. Ultimately, what he decides is  
11 his prerogative, but certainly it's a  
12 factor.

13 Q. In your professional opinion,  
14 would there be a disciplinary issue or  
15 disciplinary incident that you would  
16 consider a bar for a promotion?

17 A. No. The more serious type of  
18 stuff, like dismissing you or forcing you to  
19 separate, we take the view that short of  
20 those separation cases, discipline is  
21 designed to rehabilitate, not necessarily to  
22 punish. I mean, punishment is a part of it,  
23 deterrence is a part of it, but the primary  
24 goal of our disciplinary system, it's a  
25 progressive system. So a second occurrence

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2 or other aggravating factors could increase  
3 the penalty, but it's primarily designed to  
4 be rehabilitative. And for the things that  
5 are deemed very serious and where you're not  
6 going to be rehabilitated, it is separation.

7 Q. When you say "separation," you  
8 mean departure from the department?

9 A. From the department, yes, yes.

10 Q. When somebody is separated from  
11 the department, do they have a chance to  
12 return to the department?

13 A. Generally, no. If they're  
14 terminated, they're done. If it's part of a  
15 negotiated settlement, where they agree to  
16 retire, and sometimes that's a decision we  
17 will make because of the uncertainty of a  
18 trial. But, no, usually once they're out,  
19 they're out. I mean, there is the  
20 possibility they could appeal, bring an  
21 Article 78, and seek to get the police  
22 commissioner's decision overturned. But,  
23 no, once separated, they're out. If they're  
24 terminated, they're out. If it's a  
25 separation that is part of an agreement,

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2 then they've agreed to it, and we hold the  
3 termination in abeyance pending their actual  
4 retirement or separation.

5 Q. If a person has been demoted,  
6 would that be considered a bar to promotion?

7 A. I don't think anything is an  
8 absolute bar. Certainly it's a factor to be  
9 considered.

10 Q. But being this is the police  
11 commissioner's decision, you're not sure how  
12 much weight he would give to --

13 A. Right, no, because there are so  
14 many other variables that he would consider;  
15 how long ago was the demotion, what else has  
16 the person done, what were the circumstances  
17 of that situation, other achievements,  
18 accomplishments, their current assignment,  
19 what they've done in recent history. So,  
20 again, going back to the idea of  
21 rehabilitation and considering the entire  
22 person and their whole career trajectory.

23 Q. Understood.

24 Are you familiar with Captain  
25 Vucinaj?

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2 A. I am, I am. When I was in the  
3 Intelligence Division as the executive  
4 officer, he was a lieutenant there.

5 Q. What has been your experience  
6 with Captain Vucinaj?

7 A. My experience was limited in  
8 that when he was in Intel, he applied for  
9 and we accepted him to go on one of our  
10 overseas liaison posts. So at the time, we  
11 were building out a network of embedded  
12 liaisons in foreign law enforcement  
13 agencies. And in his case, he had applied  
14 for a position at Interpol in Lyon. I don't  
15 recall how many people applied, but he was  
16 ultimately the one who was selected by the  
17 then deputy commissioner of Intelligence,  
18 David Cohen, and he was our embed in  
19 Interpol for either two or three years.

20 Q. Did you work with him while he  
21 was in New York?

22 A. No, not prior to or after that,  
23 no.

24 Q. But were you familiar with his  
25 application to Interpol, did you have any --



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2 let me back up.

3 Were you familiar with his  
4 application to Interpol?

5 A. I don't remember his application  
6 or his interview process. I remember  
7 dealing with him -- actually visiting him at  
8 Interpol. We went out there for a  
9 conference, myself and a sergeant, when he  
10 was the liaison out there. So I spent a  
11 couple of days with him.

12 Q. How do you believe he was doing  
13 in his job at Interpol?

14 A. He seemed to do fine there. He  
15 was on a team as I recall that was dealing  
16 with exploitation of children and missing  
17 children.

18 So Interpol acts as a hub of  
19 information for a variety of law enforcement  
20 agencies worldwide. It's a way to kind of  
21 get information and share information. Some  
22 of the projects he was involved in was on a  
23 team that was looking at the dissemination  
24 and distribution of exploited materials  
25 involving children. And then also he was

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part of a team that went to Beirut following the assassination of the former prime minister, Hariri. The head of the team was a German prosecutor, and they put together an international team to go there and basically assess the situation and make a determination and recommendation. He was out there with that team for part of their time in Beirut and then came back and then ultimately came back to New York.

Q. When he came back to New York, was he under your command?

A. No, for a -- just for a brief period of time. At the time we didn't have a position in Intel for a lieutenant and he was a lieutenant at the time.

The overseas assignments were essentially one-offs. They weren't really rank specific. But then once he came back, when that assignment was completed, and then we sent somebody else out there, there was no position in Intel for him, so he went to the Detective Bureau.

Q. When people go on these special

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2 assignments, they don't keep a slot open for  
3 them for their return?

4 A. So he didn't come out of Intel  
5 in the first place. He was somebody -- when  
6 we started up this program, we would recruit  
7 internally from within Intel, but we would  
8 also publish bulletins seeking candidates  
9 who may want to apply. And he applied for  
10 one of the positions.

11 Q. Did you handle or did you see  
12 any evaluations of Captain Vucinaj or at  
13 that time he was a lieutenant?

14 A. I don't recall his evaluations,  
15 no.

16 Q. Other than that short time, did  
17 you have any experience with Captain  
18 Vucinaj?

19 A. No.

20 Q. Other than as a supervisor, are  
21 you familiar with Captain Vucinaj being in  
22 the news?

23 A. Yes.

24 Q. Can you tell me what for?

25 A. I vaguely remember, I think it

1 Pontillo

2 was one of the New York tabloids, the News  
3 or Post, an article about -- I believe it  
4 was about misclassification of crime  
5 reports.

6 Q. Did you take part in any  
7 interviews or any media in relation to that  
8 article?

9 A. One reporter was asking for, I  
10 guess in response to his -- I'm assuming  
11 that he spoke to the reporter and then the  
12 reporter was seeking comment from the  
13 department, and then I spoke to a reporter  
14 about the internal auditing process that we  
15 have for analyzing crime reports and the  
16 safeguards that were in place.

17 Q. And what was your comment to the  
18 media with that regard?

19 A. I don't remember my exact  
20 comments, but essentially that we have an  
21 internal auditing capability. We do audit a  
22 significant number of complaint reports  
23 every year and we do find errors and in some  
24 cases we find misconduct, and when we find  
25 misconduct, we take disciplinary action.

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2 Q. Are you familiar with Captain  
3 Vucinaj's disciplinary history?

4 A. No, I'm not.

5 Q. Are you aware that he has  
6 charges pending against him?

7 A. No.

8 Q. Are you familiar with where  
9 Captain Vucinaj is presently positioned?

10 A. Vaguely. I know he's in the  
11 Transit Bureau.

12 Q. Are you familiar with the  
13 Transit Bureau positions?

14 A. No, no. It's -- I have had  
15 limited experience. I was a lieutenant in  
16 the Transit district, but that was a patrol  
17 function and that was in the late '90s. So  
18 I've dealt with a couple of the executives  
19 in the Transit Bureau recently, but for very  
20 limited purposes.

21 Q. When an individual in the rank  
22 of captain or above receives a temporary  
23 assignment, how long is it usually  
24 classified as a temporary assignment?

25 MS. BLAIR: To your knowledge.

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2 A. For an executive, I don't know.  
3 Just transfers in general, temporary  
4 assignments are routinely done for 90-day  
5 increments. So anybody who is transferred  
6 on a temporary assignment, it's for 90 days.  
7 And then I've seen renewals for another 90.  
8 That's the general rule. I know there have  
9 been exceptions.

10 Q. And my questions are related to  
11 transfers or temporary assignments other  
12 than special projects; for example, I know  
13 Captain Vucinaj was assigned to write the  
14 tests for lieutenant or captain or  
15 something?

16 A. Right.

17 Q. My questions relate to  
18 assignments other than the special postings.

19 Would it surprise you to find  
20 out that somebody had a temporary assignment  
21 for a year or longer?

22 A. Nothing surprises me, but if  
23 that were brought to my attention, I would  
24 say that that was unique. There could be  
25 reasons for it.

1 Pontillo

2 Q. Would you find it out of the  
3 ordinary?

4 A. It depends upon the nature of  
5 the assignment and it depends sometimes just  
6 upon how it's processed. So, for example, I  
7 mentioned my work being assigned to the  
8 Police Commissioner's Office for the  
9 Republican National Convention back in 2004.  
10 In that case I was permanently transferred  
11 from the PC's office from January through  
12 September, but that could have just as  
13 easily been a temporary assignment because  
14 it was understood when I went there, I  
15 wasn't staying there, there was no position  
16 for me there, it was just for this one  
17 project. So sometimes it can be a factor of  
18 the particular administration at the time  
19 and how the paperwork is processed. There  
20 isn't always uniformity in our bureaucracy.  
21 I would have to know the facts and  
22 circumstances of it and what the nature of  
23 the assignment was because I would not want  
24 to opine on whether or not it was unusual or  
25 not because it might be, but there might

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2 have been a reason for it.

3 Q. I mean, just in the general gist  
4 of promotions, assignments, things of that  
5 nature.

6 Is it common for a captain to  
7 have a position that doesn't have a command?

8 A. Oh, yeah, sure. Again, it  
9 depends upon the nature of the assignment.  
10 So there are commanding officers of units,  
11 there are executive officers of units, but  
12 there are people, executives that just fill  
13 a role or handle a project and don't have a  
14 unit that they belong to or that works for  
15 them or don't even have staff.

16 Q. When you say "fill a role," what  
17 do you mean by that?

18 A. So we will designate somebody an  
19 executive in charge of special projects in a  
20 particular bureau or borough or command.  
21 They don't necessarily have staff, but they  
22 might have a project they're working on.

23 Q. Again, aside from special  
24 projects, but an actual assignment, an  
25 actual location, something to that effect,



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2 outside of the special projects?

3 A. So we have -- in every unit we  
4 have executives who are not designated  
5 anything. They are assigned to that unit.  
6 They have some function there. We will have  
7 captains, for example, assigned to boroughs,  
8 and then the borough will send him out to a  
9 precinct to be an executive officer or  
10 second executive officer without ever  
11 designating them. That does happen quite  
12 often.

13 And we will have people assigned  
14 to a unit, bureau, borough, executives in  
15 different ranks who are not designated  
16 anything. They don't have a unit under  
17 them, they don't have a particular  
18 designation. Like we do have designations.  
19 We have special projects, we have  
20 administrator, we have adjutant. Sometimes  
21 we will have people who are responsible for  
22 some work or some group of people, but  
23 without actually having a unit.

24 Like Intel, Intel was like that.  
25 There were three sections. Each section had

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2 a CO, but then there were many other  
3 executives who were assigned the function,  
4 but had no designation or even unit  
5 structure under them.

6 Q. How many captains or individuals  
7 ranked captain and above have a role of that  
8 nature in NYPD?

9 A. That I don't know.

10 Q. Could you estimate by  
11 percentage?

12 A. No, I would not want to guess  
13 because there are so many variables and  
14 every bureau is different. We had a lot of  
15 reorganizational changes in the last couple  
16 of years. So it would be a wild guess at  
17 this point.

18 Q. You mentioned the fact that some  
19 executives have no staff. Could you  
20 elaborate on that a little bit?

21 A. Perfect example was me when  
22 Commissioner Bratton selected me to put  
23 together this new unit. For a good -- well,  
24 it was in March -- for a good seven months  
25 or so, six months or seven months, not only

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2 did I not have staff, but I didn't even have  
3 an office. So I was borrowing an office in  
4 Counterterrorism because I had just come  
5 from the Joint Terrorism Task Force.

6 I couldn't stay there because  
7 that was an FBI facility. So because of  
8 classified information and all of that, the  
9 only people who are working on stuff and  
10 have a need to know can be in the facility.  
11 So I came back to headquarters, and the  
12 Counterterrorism Bureau had an empty office  
13 because somebody had just moved out in their  
14 administrative section, so I borrowed that  
15 space for at least the first six months, you  
16 know, before we actually, formally created  
17 Risk Management.

18 And initially I was borrowing  
19 people as I could, but because I didn't even  
20 have space, I couldn't even bring people in  
21 because I had no place to have them sit  
22 down, but began the process of putting out  
23 bulletins, recruiting people, identifying  
24 space, getting space built out, but it was  
25 some time before I had a staff or even

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2 physical space.

3 Q. Have you had any -- did you have  
4 any, I should say, any face-to-face meetings  
5 with Captain Vucinaj or at that time  
6 Lieutenant Vucinaj?

7 A. Yes. When he was in Intel,  
8 periodically he would return to New York  
9 from Interpol, he would come see the deputy  
10 commissioner, so I would see him in the  
11 office. So I would see him in the office,  
12 we would chat briefly. When I went to Lyon,  
13 I was with a sergeant, and I don't think I  
14 ever met with him privately. I think the  
15 sergeant was in every discussion that we  
16 had, and we were there for a couple days.

17 Q. So would you say your  
18 relationship at that time with Lieutenant  
19 Vucinaj was cordial, working and friendly?

20 A. Yes, cordial, friendly, but  
21 superior/subordinate, but, yeah.

22 Q. Since Captain Vucinaj's  
23 promotion to captain, have you had any  
24 interaction with him?

25 A. No, I've not had any

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2 interactions with him.

3 Q. By "interaction," I mean phone,  
4 e-mail, anything of that nature?

5 A. No, no. I've had no contact  
6 with him. I think he came to a couple of  
7 force stat meetings. So we do a monthly --  
8 it's a qualified control auditing process  
9 where we review use of force reports and  
10 every borough or bureau comes in quarterly  
11 and we look at an 84-day period of all their  
12 use of force reports and any other  
13 indicators where -- we are looking for the  
14 quality of the reporting and the quality of  
15 the investigations, but we're also measuring  
16 the reporting against other metrics to make  
17 sure all use of forces are being reported.

18 So I recall that at one point,  
19 and not recently, he was assigned to review  
20 use of force reports in Transit because I  
21 remember him coming to at least one of those  
22 force stat meetings, although he didn't  
23 speak. The Transit Bureau adjutant, Raymond  
24 Porteus, spoke and gave the presentation,  
25 but I remember him being there.

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2 Q. Do you remember when that was?  
3 If you said it, I missed it.

4 A. No, I don't. It was -- it  
5 wasn't this year. Probably sometime last  
6 year, but I don't remember exactly when.

7 Q. Are you familiar with Captain  
8 Vucinaj's reputation in the NYPD?

9 A. Not entirely. I mean, I know  
10 about his position or the allegations he  
11 made about underreporting of certain crime  
12 data in Transit. So in terms of reputation,  
13 that's all I know about him.

14 Q. Just to clarify, you know he has  
15 a reputation of reporting allegations of  
16 underreporting crime statistics?

17 A. Yes, yes, that I'm aware of.

18 Q. I'm looking to clarify what you  
19 believe his reputation to be. Would you say  
20 that's the --

21 A. Yes, that's -- the extent of my  
22 knowledge was, for at least some period of  
23 time, he both through the media and through  
24 his calling the Quality Assurance Division  
25 and reporting to the Quality Assurance

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2 Division that he had identified improperly  
3 classified complaint reports. So in terms  
4 of reputation, yes, reputation for  
5 disclosing or complaining about crime  
6 reports that may have been improperly  
7 classified.

8 Q. How did you hear about his  
9 calling Quality Control?

10 A. So when Risk Management was  
11 first created, one of the units that was put  
12 under Risk Management was the Quality  
13 Assurance Division. The Quality Assurance  
14 Division right now has about 80 people.  
15 It's commanded by an inspector, Bill Abramo,  
16 and they do a whole host of things, a lot of  
17 auditing, but they do primarily performance  
18 audits, so are we filling out the proper  
19 reports when we are supposed to and what  
20 does the quality of those reports look like.  
21 So there is one team in the Quality  
22 Assurance Division that just looks at  
23 complaint reports. It's actually three  
24 teams, but it is one process.

25 So there is a team that does

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2 routine auditing of every command citywide,  
3 visit every command twice a year and look at  
4 a six-month period, and they have a sampling  
5 method where they'll pull a certain number  
6 of complaint reports based upon the number  
7 of complaint reports in that command and the  
8 frequency of different crime  
9 categorizations, and they will do a more  
10 thorough analysis on those.

11 They also have a team that just  
12 looks at 911 calls, and for certain crime  
13 categories, if a certain crime was alleged  
14 to 911, they then look at what transpired,  
15 what the disposition was and whether or not  
16 a complaint report was required, and then if  
17 not, why wasn't it done.

18 And then we have another team  
19 that does confidential investigations.

20 So the routine auditing occurs  
21 programmatic every six months, we go back  
22 six months. So essentially if you're a  
23 precinct CO, all of your complaint reports  
24 for your entire tenure are subject to  
25 auditing. But then the confidential



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2 investigation team will come in and they  
3 will do a much deeper dive when there is  
4 some indication of deliberate or intentional  
5 underreporting.

6 So people make mistakes, that's  
7 understandable, especially when you get into  
8 crime categories, like grand larceny and  
9 identity theft. The laws are very, very  
10 complicated. So there is some human error  
11 involved. When the QAD goes in, if they see  
12 a pattern that could be indicative of some  
13 wrongdoing, so if there is one supervisor  
14 always responding to the scene and making  
15 direction to change something, that's a huge  
16 red flag, but if it's a couple of  
17 misclassifications within, at the time, a  
18 2 percent error rate, and there was no  
19 indication of anything deliberate or  
20 intentional, then corrective action is taken  
21 to correctly classify those complaint  
22 reports, but no further action is necessary  
23 until the next audit, in which case we will  
24 go back and look to see how they've  
25 progressed.

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2 But if there is indication that  
3 something is done inappropriately, something  
4 is systematic, there is a supervisor that is  
5 involved in changing classifications, then  
6 we will conduct a confidential audit. We  
7 will look at in some cases every complaint  
8 report or every complaint report in a  
9 certain category. We will call back crime  
10 victims to find out what happened and we  
11 will do a much deeper 911 audit to look for  
12 underreporting and occasionally we will find  
13 significant problems.

14 Going back to 2015, we had a  
15 situation in a Bronx precinct where we did  
16 that deep dive and we found a number of  
17 complaint reports that were changed. Most  
18 of it came back to a single supervisor who  
19 was just making a lot of bad decisions. And  
20 there was some pretty severe discipline for,  
21 I think, about 18 people.

22 Q. Now, but how did you become  
23 aware of Captain Vucinaj's calls to Quality  
24 Control?

25 MS. BLAIR: Answer the question.

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2 Q. I appreciate your explanation.

3 A. At some point, and I don't  
4 remember, this was when I was still in Risk  
5 Management, so it goes back a few years,  
6 Bill Abramo told me he was getting calls or  
7 the team was getting calls from the captain  
8 about complaint reports that he observed  
9 that he thought were misclassified. And my  
10 direction to Bill was, well, call him back  
11 and tell him he's a captain of police, he  
12 should take charge and correct it or have it  
13 corrected. So if he's looking at a  
14 complaint report that was written last night  
15 and the cop got it wrong, then he should be  
16 taking action to make sure the cop gets it  
17 right and the supervisor gets it right.

18 He kind of misunderstood the  
19 role of Quality Assurance. You know, we're  
20 not there to do the sergeant's job or the  
21 captain's job. They're there to come in  
22 after the fact and do an audit to measure  
23 the performance of the command over a period  
24 of time. So he was a little misguided in  
25 that sense in terms of you're a captain, fix

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2 it.

3 You know, your job is not to  
4 pass it off to somebody else. If you're  
5 identifying something wrong, then address  
6 it. You know, you've got the authority,  
7 you're a captain of police. Don't call QAD  
8 and pass it off to them. That's not what  
9 you're supposed to be doing. If you say  
10 you've gone back and you found stuff over a  
11 period of time, then that's a little bit  
12 different, we will take a look at our  
13 auditing.

14 But on some of them, my  
15 understanding is he was right about whether  
16 or not a complaint report should have been  
17 classified as jostling or grand larceny.  
18 And this is something that has gone into the  
19 recent crime classification guide. We never  
20 had any guidance on jostling. I mean,  
21 certainly the penal law definition is there,  
22 but we added some explanation of "jostling."

23 Also, he, as I recall, raised  
24 questions about some assault complaints or  
25 whether or not it should be assault on a

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1 police officer. And he was basing his  
2 interpretation upon reading the penal law  
3 that says if you intend to prevent the  
4 police officer from doing their duty and you  
5 cause an injury, that's assault. And so  
6 then the question is how far out does that  
7 go? So if I try to arrest you, but you run  
8 away, and I trip and fall, are you now  
9 guilty of an assault? So we had our legal  
10 bureau look at it and we came up with some  
11 guidelines in terms of how far does jostling  
12 go.  
13

14 "Jostling" is a weird statute.  
15 You know, it's somebody's hand getting in  
16 dangerously close proximity to somebody's  
17 pocket without actually touching them, but  
18 very, very hard to prove and articulate. So  
19 we had legal take a look at it. And the  
20 most recent version of the Crime Reporting  
21 Guide, which gives guidance on how to  
22 prepare complaint reports and how to make  
23 these decisions includes a description of  
24 "jostling" and includes some information on  
25 assault. And, you know, it's based in part

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2 upon the issues he raised.

3 Q. Was his, "his" being Captain  
4 Vucinaj, phone calls to Quality Control, QAD  
5 as you call it, brought to your attention  
6 because of the number of calls or the nature  
7 of the calls or because he was, as you said,  
8 sometimes correct in these?

9 A. No, I don't remember exactly  
10 when Bill Abramo first raised this with me.  
11 When Abramo raised it with me, it was out of  
12 some frustration that he was calling every  
13 day with questions that he should have been  
14 addressing as a captain. And Bill would  
15 speak to him for some period of time, but  
16 then I think just stopped taking his calls  
17 or the captain just started talking to one  
18 of the team members, but it was -- yeah, I  
19 don't want to speak for Bill, but what he  
20 conveyed to me was some frustration about  
21 Marash calling every day and saying I just  
22 read a 61, I think it's a misclassification,  
23 and it's like, Bill, my direction to Bill  
24 was, call him back, tell him he's a captain,  
25 fix it.

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2 Q. Do you know if -- please forgive  
3 my terminology. Do you know if Bill called  
4 Marash and said you're the captain, go do  
5 it?

6 A. He said he did, but I never  
7 followed up after that.

8 Q. Did these phone calls eventually  
9 stop that you're aware of?

10 A. I don't know. I'm going to see  
11 Bill this week. I'll ask him.

12 MR. ALBANESE: Off the record.

13 (Discussion off the record.)

14 Q. Given Captain Vucinaj's phone  
15 calls to QAD and subsequent responses  
16 accordingly, would you say this damaged  
17 Captain Vucinaj's reputation?

18 A. I don't know that it damaged his  
19 reputation department-wide. I'm not sure  
20 how many people were even aware of this.  
21 Certainly it was a nuisance for Inspector  
22 Abramo and Quality Assurance to have to  
23 field these phone calls every day, but I'm  
24 not sure to what extent that went outside  
25 that circle of Quality Assurance and my

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2 office.

3 Q. I believe you said you are not  
4 aware or you do not remember, I should say,  
5 when Bill had brought this to your attention  
6 that Captain Vucinaj was making these phone  
7 calls. Could you guesstimate whether it was  
8 two years ago, three years ago?

9 A. So I was still in Risk  
10 Management, so that would be before January  
11 of '18. Sometime in 2017.

12 We actually opened a case. So  
13 the Confidential Investigation team opened  
14 the case in Transit based upon his  
15 assertions and they reviewed every jostling  
16 and every grand larceny especially related  
17 to arrests, found a few misclassifications,  
18 but also found some ambiguity and that's  
19 what then prompted including a description  
20 of "jostling" in the new crime  
21 classification guide that went out earlier  
22 this year.

23 Q. Are you aware, again, if you're  
24 aware, if Captain Vucinaj took matters in  
25 his own hands as a captain and contacted the



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2 individuals who wrote these reports that he  
3 felt were misclassified?

4 A. I'm not aware of that. It may  
5 have happened, but I'm not aware of it.

6 Q. Given Captain Vucinaj's phone  
7 calls to QAD and taking these matters into  
8 his own hand possibly, would that damage  
9 Captain Vucinaj's reputation within One  
10 Police Plaza?

11 A. I don't know. My circle of  
12 information was limited to what we were  
13 doing in Risk Management and what Quality  
14 Assurance was working on. So I'm not aware  
15 of the extent to which his activities made  
16 it up his chain of command and whether or  
17 not and to what extent other executives in  
18 the Transit Bureau knew of or was involved  
19 in or what type of impact it had upon them,  
20 but certainly it could have.

21 Q. If that impacted his reputation,  
22 could it also impact his ability to receive  
23 a promotion?

24 A. Absolutely.

25 Q. I may be repeating a question,

1 Pontillo

2 but are you aware of Captain Vucinaj's chain  
3 of command at this point?

4 A. I know he's in the Transit  
5 Bureau. I know the chief of Transit is  
6 Eddie Delatorre. I'm not sure where he fits  
7 in that chain of command.

8 Q. So being that it's outside of  
9 your purview, you wouldn't be familiar with  
10 his assignment at this particular point in  
11 time?

12 A. That's correct.

13 Q. If I gave you a description, do  
14 you think you would be able to?

15 A. Perhaps.

16 MS. BLAIR: Off the record.

17 (Discussion off the record.)

18 Q. This is an e-mail dated July 25,  
19 2018, where it indicates Captain Vucinaj's  
20 temporary assignment from Transit Bureau  
21 Brooklyn to Transit Bureau Liaison Rail  
22 Control?

23 A. So my understanding of Rail  
24 Control is that that is an operation center  
25 with the MTA and they monitor train traffic

1 Pontillo

2 and situations in the transit system, but  
3 beyond that, I don't know the details of  
4 what they do.

5 Q. Are you familiar with the  
6 staffing of the Rail Control in that  
7 capacity?

8 A. No.

9 Q. I know we have been going for  
10 two hours, which we have an allocation of  
11 three, but give me a couple of minutes just  
12 to organize, and we can probably finish up  
13 relatively quickly and be on our way.

14 (Recess.)

15 Q. When the NYPD collects  
16 information on its rank and file, as well as  
17 the executives, do they collect information  
18 on national origin?

19 A. People can self-report. So  
20 going back to the initial hiring process,  
21 people can self-report their ethnicity and  
22 national origin, foreign languages spoken,  
23 country of birth, so we ask it, people can  
24 provide that information.

25 Q. Do you know what percentage of

1 Pontillo

2 the police force would provide that  
3 information?

4 A. I think most do. I'm just  
5 thinking of the personnel files I've looked  
6 at. I've seen the occasional unknown or  
7 blank, but I think it's usually there.

8 Q. When a package is put together  
9 for promotional aspects, would this be part  
10 of the package if the person self-reports  
11 that information?

12 A. So we include somebody's  
13 electronic personnel file, call it the RAILS  
14 report, R-A-I-L-S. It's a snapshot of the  
15 person's career. It can be many pages, but  
16 it includes pedigree and biographical  
17 information, religion, if self-reported,  
18 languages spoken, if reported, and in some  
19 cases people have been tested because we  
20 will send people to get certified in a  
21 foreign language, as well as their whole  
22 career path, assignments, ranks, transfers,  
23 number of arrests, significant discipline,  
24 awards, all of their training they've  
25 attended. It all -- it's consolidated. It

1 Pontillo

2 basically pulls information from other data  
3 sources and it gives you basically a  
4 person's electronic personnel file.

5 So when the packages go out to  
6 the bureaus, we will do the resume, the  
7 cover letter, we will tell the bureau chief  
8 how many allocations they have for each rank  
9 to make recommendations, and for each person  
10 the RAILS report will be there as well.

11 Q. Can a report be broken down by  
12 national origin, for example, what  
13 percentage of the NYPD is of any specific  
14 national origin, whether it be German,  
15 Italian, French?

16 A. We can do that to the extent  
17 that people have reported, but we can do  
18 that, yes.

19 Q. Would you be able to guesstimate  
20 what the national origin is of the executive  
21 branch of the NYPD?

22 A. No, no.

23 MR. ALBANESE: I think that  
24 answers our questions for today.

25 MS. BLAIR: I think I have two

1 Pontillo

2 that I wanted to ask.

3 EXAMINATION BY

4 MS. BLAIR:

5 Q. Previously you testified each  
6 borough gets an allocation of the number of  
7 executive advancements?

8 A. Yes.

9 Q. Do you know on average how many  
10 each borough will get?

11 A. No. It's a function of their  
12 staffing. So the way we will do it is, we  
13 will look at -- we began with the historical  
14 numbers, how many people have been promoted  
15 in each rank over the last five to ten  
16 years. We have been going five to six.  
17 Recently it's been a more accurate measure.  
18 We will then look at that. And then we  
19 always want to have a few more in the pool  
20 than we think we have actual number of  
21 vacancies. And then we will look at each  
22 bureau because the patrol bureau has 20,000  
23 people in it, the Risk Management Bureau has  
24 a hundred or two hundred, and the number of  
25 executives is commensurate with the overall

1 Pontillo

2 staffing.

3 So patrol services bureau has  
4 many, many, many more executives because  
5 they have present COs and XOs and a lot of  
6 specialty unit that are essentially the cops  
7 you see on the street. That's all patrol.  
8 A small bureau with fewer people will have a  
9 few number of executives, and, therefore,  
10 based on their number of executives and the  
11 number of executives they have in each rank,  
12 we give them basically their portion, which  
13 is proportional to the overall executive  
14 population of the department.

15 Q. And you also testified that  
16 currently people know which tier they're in.  
17 How do they know?

18 A. Yes, so everybody was  
19 interviewed. When the Office of  
20 Professional Development ran those feedback  
21 training sessions beginning, I think, the  
22 end of April, but running into May, each  
23 bureau chief that came was given the grid  
24 for their bureau. So they saw who was  
25 recommended by -- either depending upon

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Pontillo

whose chain of commend they're in, either the first deputy commissioner, the chief of department or the chief of staff, and so they, of course, know who they recommended.

So with those two pieces of information, and they previously had received the list of everybody in their bureau who was eligible, so they had all Tier 3, they knew who Tier 2 was because they recommended them, and then Tier 1 were the people who were recommended by one of -- we called them -- the top three or the big three to the police commissioner.

Q. And then I guess during their conversation, where they get feedback, their bureau chief would tell them you're in whichever tier?

(Continued on following page.)



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Pontillo

A. Yes.

MS. BLAIR: That's it.

MR. ALBANESE: Thank you.

A. Thank you.

(Time noted: 12:23 p.m.)

-----  
MATTHEW PONTILLO

Subscribed and sworn to before me  
this \_\_\_ day of \_\_\_\_\_, 201\_.

-----  
Notary Public



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2

----- I N D E X -----

3

WITNESS EXAMINATION BY PAGE

4

M. PONTILLO MR. ALBANESE 4

5

MS. BLAIR 94

6

7

----- INFORMATION REQUESTS -----

8

DIRECTIONS: (NONE)

9

RULINGS: (NONE)

10

TO BE FURNISHED: (NONE)

11

REQUESTS: (NONE)

12

MOTIONS: (NONE)

13

CONFIDENTIAL: (NONE)

14

15

----- EXHIBITS -----

16

17

(NO EXHIBITS MARKED.)

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1 **ERRATA SHEET**

2 **NAME OF CASE: MARASH VUCINAJ V. THE NEW YORK CITY**  
**POLICE DEPARTMENT AND THE CITY OF NEW YORK**

**DATE OF DEPOSITION: SEPTEMBER 3, 2019**

3 **NAME OF DEPONENT: MATTHEW PONTILLO**

4 **PAGE LINE(S) CHANGE REASON**

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21 \_\_\_\_\_  
**MATTHEW PONTILLO**

22 **SUBSCRIBED AND SWORN TO BEFORE ME**

23 **THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_.**

24 \_\_\_\_\_  
 25 **(NOTARY PUBLIC)**

\_\_\_\_\_ **MY COMMISSION EXPIRES:**

[&amp; - advancement]

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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS  
COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

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